

FILED
AUG - 5 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR-08-0499 CW (DMR)
)	
Plaintiff,)	
v.)	REPORT AND RECOMMENDATION
)	REGARDING DEFENDANT'S
JUSTIN D. LYNN,)	ADMISSION OF VIOLATIONS OF THE
)	TERMS AND CONDITIONS OF HIS
Defendant.)	SUPERVISED RELEASE OR
)	PROBATION

The magistrate judge recommends to the district court that it accept the defendant's admission to a violation of the terms and conditions of his supervision as charged in the Amended Petition filed on July 22, 2010. At the hearing on August 5, 2010, defendant partially admitted to the allegations set forth in Charge Four of the Amended Petition—specifically, he admitted that he possessed drug paraphernalia (a misdemeanor) in violation of the standard condition that he not commit another federal, state, or local crime. The magistrate judge makes the following findings:

1. On the hearing date set forth above, with the assistance of counsel, the defendant waived his right to admit the violation in district court and instead consented to admit the violation in a hearing in magistrate court. Specifically, the magistrate judge advised him that he had a right to admit the violation in district court and that under 28 U.S.C. § 636(b) and Federal Rule of Criminal Procedure 59, he could waive that right and consent to admit the violation in a hearing in magistrate court. The magistrate judge also advised him that it would issue a written report recommending that

REPORT AND RECOMMENDATION
CR 08-0499 CW (DMR)

cc: Copy to parties of record via ECF, Nikki, Probation

1 the district judge accept the admission, that the district judge would review the recommendation and
2 decide whether to accept the admission, and that the district judge and not the magistrate judge
3 would sentence him. The magistrate judge also advised him of the procedures (also set forth at the
4 end of this order) for challenging the magistrate judge's recommendation. The defendant then
5 waived his right to proceed in district court and consented to the magistrate judge's conducting the
6 hearing regarding the admission of the supervised release violation.

7 2. The magistrate judge then reviewed, and the defendant acknowledged that he understood,
8 the following: (a) the nature of the charge and the maximum penalty he faced; (b) his rights under
9 Federal Rule of Criminal Procedure 32.1(b)(2); (c) the district judge, not the magistrate judge, would
10 conduct the sentencing; and (d) the parties' sentencing agreement was not binding on the district
11 judge.

12 3. After the advisements set forth in Rule 32.1(b)(2) and summarized here, the defendant
13 waived his right to a Rule 32.1(b)(2) hearing and admitted the charge summarized above. The
14 magistrate judge found that he was fully competent and capable of admitting the charge in the
15 petition, that he was aware of the nature of the charge and the consequences of admitting it, and that
16 his admission and waiver of rights were knowing and voluntary. This court thus recommends to the
17 district judge that it accept the defendant's admission.

18 4. Any party may serve and file specific written objections within fourteen days after being
19 served with a copy of this order. *See* 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59. Failure to file
20 objections within the specified time may waive a party's right to review. *See* Fed. R. Crim. P. 59(b).

21 5. At the parties' request, this court set the matter for further proceedings before the district
22 judge on Wednesday, September 8, 2010, at 2:00 p.m.

23 IT IS SO RECOMMENDED.

24 Dated: August 5, 2010



25 DONNA M. RYU
26 United States Magistrate Judge
27
28